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International Covenant on Civil and Political Rights

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Human Rights Committee
Eighty-sixth session

Summary record of the 2350th meeting
Held at Headquarters, New York, on Monday, 20 March 2006, at 3 p.m.

Chairperson: Ms. Chanet
later: Mr. Solari Yrigoyen (Vice-Chairperson)
later: Ms. Chanet (Chairperson)

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant and of country situations (*continued*)

Second periodic report of Hong Kong Special Administrative Region of the People's Republic of China

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06-27627 (E)

The meeting was called to order at 3.10 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant and of country situations (*continued*)

Second periodic report of Hong Kong Special Administrative Region of the People's Republic of China (CCPR/C/HKG/2005/2 and CCPR/C/HKG/Q/2)

1. *At the invitation of the Chairperson, the delegation of Hong Kong Special Administrative Region of the People's Republic of China took places at the Committee table.*

2. **Mr. Zhang Yishan** (People's Republic of China) said that the Basic Law of Hong Kong SAR stipulated that the provisions of the International Covenant on Civil and Political Rights applicable to the Region remained valid after 1 July 1997 and were to be implemented through the laws of the Region. Although China was not yet a State party to the Covenant, in order to comply fully with the principle of "one country, two systems", the administration of Hong Kong SAR had prepared its second periodic report on the implementation of the Covenant in the Region.

3. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region) said that although it had previously focused on efforts to raise public awareness to foster a culture of mutual understanding and tolerance among people of different races, the Government, acting in response to the concern expressed by the Committee in its previous concluding observations, had announced its intention to legislate against racial discrimination. In September 2004 the Government had issued a consultation paper on the proposed legislative framework to collect public opinion. The bill was currently being finalized. Meanwhile, public education efforts were ongoing, led by the Committee on the Promotion of Racial Harmony, a multi-ethnic, multi-cultural body that advised the Government on strategies for fostering communal harmony and intercultural understanding.

4. While the Government was aware that the Committee's concern applied also to discrimination on the grounds of sexual discrimination, deep-rooted traditional values could pose difficulties. In September 2004, a sexual minorities forum had been established to provide a formal and regular channel of communication between the Government and persons of different sexual orientations, which had met with a positive response. In May 2005, a gender identity and sexual orientation unit had been established within the Home Affairs Bureau to actively promote equal opportunities for gay, lesbian and transgender persons and operate a funding scheme to support worthwhile community projects on sexual orientation. It was hoped that that work would help change attitudes and pave the way for the introduction of legislation.

5. Regarding arrangements for electing the Chief Executive in 2007 and forming the Legislative Council in 2008, Hong Kong SAR's electoral system would be determined in accordance with the Basic Law, and gave rise to no incompatibility with the provisions of the Covenant. Notwithstanding the reservation made to article 25 (b), both the central authorities and the Hong Kong SAR Government were fully committed to the election of the Chief Executive and all members of the Legislative Council by universal suffrage.

6. Since 1997, steady progress had been made in the area of constitutional development. The first term Chief Executive had been elected by an Election Committee comprising 400 representatives, mostly elected, from different sectors of the Hong Kong community. For the second term election the size of the Election Committee had been doubled to 800. As regards the Legislative Council, the Basic Law provided for a steady increase in the number of seats returned by geographical constituencies based on universal suffrage — 20 in the first term, 24 in the second term and 30 in the current third term. It should be noted that the voter turnout of 1.7 million or 55 per cent of the registered electorate and the number of contesting candidates in the 2004 Legislative Council election had both been historic highs.

7. The Hong Kong SAR Government was keen to further open up the electoral system, and to that end in January 2004 the Chief Executive had established the Constitutional Development Task Force to come up with proposals for the electoral arrangements for 2007 and 2008. The proposals would have substantially broadened public participation in the elections. Regrettably, despite receiving widespread support, the proposals had not achieved the required two-thirds majority support of all the members of the Legislative Council. Accordingly, the next two would be held on the basis of the existing arrangements. Nonetheless, the SAR Government had initiated discussions on the

formulation of a roadmap through the Commission on Strategic Development in November 2005, with the aim of designing a universal suffrage system by early 2007.

8. The Government had intensified its efforts to combat domestic violence and child abuse in recent years. The Government's strategy comprised preventive measures such as community education and public awareness, support services for victims ranging from housing and financial assistance to counselling, and specialized services and crisis intervention. The Domestic Violence Ordinance was being reviewed to assess how protection to victims of domestic violence could be strengthened and the Social Welfare Department planned to increase contact with vulnerable families and improve their access to support services; two batterer-interventions programmes would also be piloted to address the needs of batterers and break the cycle of violence.

9. **The Chairperson** invited the delegation to address questions 1 to 16 on the list of issues (CCPR/C/HKG/Q/2).

Constitutional and legal framework within which the Covenant is implemented and conformity of laws with it (article 2 of the Covenant)

10. **Mr. Lai** Yee Tak (Hong Kong Special Administrative Region), responding to question 1 on the list of issues, said that the Standing Committee of the National People's Congress was vested with the power to interpret the Basic Law in accordance with the Constitution of the People's Republic of China and the Basic Law itself; that power was respected by the courts of the Region. The Standing Committee's interpretation of 6 April 2004 and its subsequent decision of 26 April 2004 were legal and constitutional. Moreover, they could not be considered "re-interpretations", as the Standing Committee had not previously authoritatively interpreted the relevant provisions of the Basic Law or its annexes.

11. **Mr. Allcock** (Hong Kong Special Administrative Region), added that the interpretation under discussion did not concern any provision of the Covenant, but rather the right under the Basic Law to develop, in certain circumstances, democratic institutions.

12. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region), turning to question 2, said that in view of the existing institutions to promote and safeguard human rights, such as the Equal Opportunities Commission (EOC) and the Ombudsman, the Government did not envisage establishing a regional human rights institution. Ombudsman's mandate covered any maladministration by the Independent Commission Against Corruption (ICAC) or the police force in respect of the Code on Access to Information; given that other mechanisms existed for the treatment of complaints against the police or the ICAC, there were currently no plans to extend it.

13. In response to question 3, she said that an independent panel had in fact been appointed to investigate the alleged incident, and the authorities were currently working to implement its recommendations. The 2002 review of the Equal Opportunities commission had focused on organizational and operational matters, with a view to strengthening the latter's effectiveness.

14. *Mr. Solari Yrigoyen, Vice-Chairperson, took the Chair.*

15. **Mr. Allcock** (Hong Kong Special Administrative Region), answering question 4, said that since the National Security Bill had been withdrawn, no timetable had been established for recommencing the exercise.

Principles of gender equality and non-discrimination; freedom from torture and cruel, inhuman or degrading treatment; right to be free of arbitrary arrest and detention; security of the person and protection from arbitrary arrest; treatment of prisoners and other detainees (articles 3, 7, 9, 10 and 26 of the Covenant)

16. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region), in reply to question 5, said that measures to combat violence against women should also encompass violence against men, as 15 per cent of victims of domestic violence were men. The issue of domestic violence was receiving high-level attention within the administration and in the community in general, prompted by a major incident the previous year when a man had murdered his wife and two children before committing suicide. The Chief Executive had emphasized the need for the whole community to come together to prevent such tragedies from occurring.

17. **Ms. So** Ka Pik (Hong Kong Special Administrative Region), referring to question 6, said

under the Reciprocal Notification Mechanism introduced in January 2001, the mainland and Hong Kong SAR authorities informed each other of unnatural deaths and criminal proceedings instituted by the police or by the customs or immigration authorities in their respective jurisdictions involving residents of the other party. Upon receiving such notification, the Hong Kong police force would inform family members and provide practical assistance to the detainee and/or his family and relayed their requests and concerns to the mainland authorities for follow-up.

Prohibition of slavery or forced or compulsory labour (article 8 of the Covenant)

18. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region), referring to question 7, said she wished to dispel the notion that the region might be a centre for human trafficking. Despite being a busy transportation hub with a liberal visa regime, it was ranked in the first tier of nations having robust measures to combat human smuggling and trafficking.

19. **Ms. So** Ka Pik (Hong Kong Special Administrative Region) stressed that cases of human trafficking were rare. All such cases were investigated and the guilty parties prosecuted in accordance with the Crimes and Immigration Ordinances. Services available to victims of trafficking included welfare, psychological support and counselling, legal aid, medical care and temporary accommodations.

Right to privacy; to freedom of thought, conscience and religion; to freedom of opinion and expression, peaceful assembly and association (articles 17, 18, 19, 21 and 22 of the Covenant)

20. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region), referring to question 8, said that her Government had taken note of the Committee's concerns regarding the telecommunications Ordinance, and was committed to balancing the need to combat criminality and ensure public security while at the same time protecting privacy. She hoped that the new bill currently before the Legislative Council would satisfy the Committee's concerns.

21. **Mr. Allcock** (Hong Kong Special Administrative Region) said that the proposed legislation contained guarantees to prevent abuse of power and meet the Committee concerns with regard to privacy. For example, the most intrusive forms of covert surveillance would require approval by a judicial officer while less intrusive surveillance would be reviewed by an independent monitoring body after the fact; that body could order compensation if it found that the authorities had acted improperly.

22. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region), referring to question 9, said that freedom of expression and of the press were fundamental rights enshrined in article 27 of the Basic Law and article 16 of the Bill of Rights. The Region had a very diverse and vibrant free press. Her Government was committed to a full investigation of the reports and to prosecuting any guilty parties. In one case a suspect had been arrested and convicted in what was found to have been a debt-related matter, the investigation of the second case was still under way and in the third case the victim believed he was being pressured to modify his criticisms of the Government. The individuals involved were once again public figures; one had even been elected to the Legislative Council and one would soon be starting a new public affairs radio programme that proved her Government was bound by the rule of law and would not tolerate intimidation of the press.

23. **Mr. Allcock** (Hong Kong Special Administrative Region), referring to question 10, stressed that the law provided guarantees of freedom of the press; if the authorities wished to have a search warrant issued against a journalist they must satisfy a judge that such a warrant was necessary. In the case involving the Independent Commission against Corruption (ICAC) and searches of seven news agencies and the homes of their journalists, he explained that the stories printed by the journalists had included information which could identify an individual in the ICAC witness protection program. The ICAC had therefore requested the searches to ascertain the identity of the individuals who had disclosed to the press information proscribed by law. The court of first instance had found that the ICAC had acted wrongly but the Court of Appeal, while dismissing the ICAC appeal on technical grounds, had concluded that the Commission had acted lawfully in seeking to guarantee the integrity of its witness protection program.

24. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region), referring to question 11, said that residents of the Hong Kong SAR travelling outside the Region were expected to abide by the laws and regulations of the relevant jurisdiction. Individuals

detained by the mainland authorities would be dealt with in accordance with the reciprocal notification system she had described earlier. She stressed that within the Region, academic freedom was included under guarantees of freedom of expression and opinion contained in the Basic Law.

25. **Mr. Allcock** (Hong Kong Special Administrative Region), referring to question 12, said that a National Security Bill had been proposed to narrow the overly broad definitions of treason and sedition in the Crimes Ordinance inherited from long-established law so that the definitions concerning treason would be applicable only in times of war or armed invasion, and those relating to sedition would be limited to acts intended or likely to promote secession or disorder. Unfortunately that Bill had been withdrawn following opposition within the Legislative Council. He stressed, however, that in all such cases the courts interpreted the law in the light of the provisions of the Covenant.

26. *Ms. Chanet (Chairperson) resumed the Chair.*

27. **Mr. Wong** Sze Ping (Hong Kong Special Administrative Region), referring to question 13, said the Societies Ordinance on the registration and operations of societies was simply aimed at ensuring that societies operated within and according to the law and was in full compliance with the provisions on the right of association contained in articles 21 and 22 of the Covenant. It did not impose arbitrary restrictions but simply sought to ensure that the rights to peaceful assembly and association were exercised within the context of the laws necessary to protect the functioning of a democratic society. As of January 2006, there were 20,499 registered or exempted societies, 13,052 of which had been registered after 1 July 1997.

28. The Public Order Ordinance (question 14) regulated the right to assembly in accordance with article 39 of the Basic Law. It sought to balance the right of expression and opinion with the interests of the community at large. Since July 1997 more than 18,600 public meetings had been held, an average of 6 per day. Only 10 public meetings and 11 demonstrations had been prohibited, 9 of which had subsequently been authorized after the organizers had revised their request.

29. **Mr. Allcock** (Hong Kong Special Administrative Region) said the Ordinance simply required prior notification and authorization of public meetings; the courts interpreted the law with a view to guaranteeing fundamental rights while at the same time upholding the Government's right to impose reasonable restrictions as long as said restrictions were deemed necessary and met the criterion of proportionality. Major European jurisprudence in that area had served as a model as had the Covenant itself. The only difference with regard to articles 21 and 22 of the Covenant was that the courts had found the notion of "ordre public" too vague and that reference had been struck out.

30. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region), referring to question 15, said it was not true that restrictions had been placed on Falun Gong practitioners. They had the same rights as any other organization or religion and had been granted use of public facilities, most recently in January 2004. A request for use of a public facility in the month of May had been approved.

31. **Ms. So** Ka Pik (Hong Kong Special Administrative Region) stressed no one was barred from entering the Region on the grounds of religion or belief. It was the responsibility of the Immigration Department to decide whether to permit an alien to enter Hong Kong, taking into account all relevant factors and circumstances. With regard to a recent case involving visitors professing to be practitioners of Falun Gong, she said that case was still before the courts and it would therefore be inappropriate for her to make any comment.

32. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region), referring to question 16, said she was perplexed by the Committee's assertion that the Hong Kong SAR lacked an institutional framework for union recognition. The Employment Ordinance granted employees the right to become members or officers of trade unions registered under the Trade Unions Ordinance. An institutional framework did therefore exist and there was a vigorous trade union movement. Furthermore, her Government intended to strengthen the law to include guarantees of reinstatement for employees who had been wrongfully dismissed, including for trade union activities.

33. Although she was unclear as to the relevance of collective bargaining to the provisions of article 22 of the Covenant, she said that the Labour Department had established a Workplace Consultation Promotion Division to promote voluntary, direct negotiations between employers and employees. The Division also

promoted dialogue between employers and employees through tripartite committees at the industry level to deal with issues of common concern. The current system of voluntary collective bargaining seemed successful given the very low average number of working days lost through strikes and her Government had no plans to institutionalize compulsory collective bargaining.

34. **The Chairperson** invited the Committee to pose additional questions regarding the List of Issues.

35. **Mr. O'Flaherty**, after applauding the involvement of civil society in the preparation of the report and in efforts to ensure wide public dissemination of the report, said he wondered why the report submitted to the Committee contained 400 paragraphs but the booklet distributed to the public contained only 343 paragraphs. He also pointed out that although he had been able to access the report through the Home Affairs Department website, he had not been able to do so through the Government's official information website.

36. Turning to the question on the list of issues, he expressed great concern that an interpretation had had to be requested three times from the Standing Committee, a recourse which was intended to be used only in exceptional circumstances. He wondered whether any public consultations were held as a matter of course before referring an issue to the Standing Committee and in general what safeguards there were to ensure that the Standing Committee would not act *ultra vires* and would make an interpretation based on the law.

37. He reiterated, in the context of the reinterpretation of the Basic Law issued by the Standing Committee in April 2004, that in the Committee's view, already expressed in 1995, the British Government's reservation to article 25 (b) of the Covenant was no longer applicable given the existence of electoral provisions in the Hong Kong SAR. The April 2004 interpretation substantially changed the Basic Law and to some extent shifted the process for initiating electoral change from the Legislative Council to the Chief Executive and therefore perpetuated and exacerbated the problem of compliance with article 25 of the Covenant. The decision constituted an unfortunate step backwards, away from the goal of universal suffrage set out in the Basic Law. He would welcome the delegation's views on that issue.

38. He also had concerns regarding the compatibility of the electoral system with article 25 of the Covenant, in particular the continued existence of the functional constituencies. Although such electoral groups did exist in other jurisdictions, such bodies were incompatible with the goal of universal suffrage because they allowed an elite to have excessive power and gave some actors the ability to have multiple votes through corporate arrangements. He asked whether and how the delegation envisaged amending the functional constituency model with a view to its elimination.

39. Turning to questions 2 and 3 on the list of issues, he said that he had been disappointed to hear that Hong Kong SAR was not yet ready to establish a national human rights institution in accordance with the Paris Principles, for the existing mechanisms for the protection of human rights had been rated very poorly; he urged it to consider reviewing its position. The decision not to extend the mandate of the Equal Opportunity Commission was also disappointing. He wondered if it might be extended to encompass race. The lack of enforcement power when the Equal Opportunity Commission investigated the Government and its inadequate budget were other matters of concern. While the delegation had indicated that an independent panel had reported on the alleged EOC incident (question 3), he noted that civil society had been unhappy with its findings and therefore asked if any consideration was being given to reopening the panel. It would be useful if the Committee could receive the review which EOC had commissioned consultants to prepare and which had been completed in 2002.

40. With regard to question 4 of the list of issues on the National Security Bill, he was somewhat concerned at the views expressed in the Region regarding the bill and would like to know what type of civil society consultation would take place if and when another similar bill was introduced. It would be helpful if the delegation would comment on the future drafting process and compliance with the Covenant regarding such matters as information, powers of search and arrest, bans on organizations and sedition.

41. **Mr. Wieruszewski**, turning to question 5 of the list of issues, welcomed the extensive information provided regarding family violence, but wondered why

it had taken so long to pass measures on that crucial issue; the previous family violence bill had been submitted in 1987. Noting that, in one of the specific domestic violence cases cited, the victim had sought police protection but had not received it, he asked if there were any plans to provide specialized training for police and other law enforcement officers on the issue.

42. With regard to question 6, the "one country, two systems" situation of Hong Kong SAR was indeed unique, but the system of notification to assist its residents detained in mainland China was inefficient and should be kept under scrutiny.

43. **Mr. Solari Yrigoyen**, recalling the delegation's categorical statement to the effect that trafficking in persons and slavery did not exist in Hong Kong SAR, said that the Committee had learned from other sources that trafficking and exploitation did, indeed, take place, mainly involving immigrants from Southeast Asia who were drawn to the Region because of its relative affluence. While the minimum allowable wage would afford foreign domestic workers some protection, he would like to know if those workers also had the right to social security benefits. As far as trafficking was concerned, the law against child pornography adopted in 2003 represented progress, but the Committee would like to hear the results of its enforcement. He also asked if trafficking victims were given medical, legal or psychological assistance before being returned to their countries of origin.

44. **Mr. Ando**, referring to question 11 of the list of issues, drew attention to a case involving a historian of global reputation who had used materials already in the public domain in his teaching and research and had been detained by the Chinese authorities; his family in Hong Kong SAR had received only minimal information on his situation and their requests to assist him had gone unanswered. He invited comment from the delegation on the reciprocal arrangements for exchange of information and family notification.

45. Turning to question 12, he asked if the Government had any plans to provide further protections beyond those in its current policy on freedom of speech and expression. Regarding the restrictions placed on Falun Gong practitioners, including their use of public facilities, mentioned in question 15, he inquired whether Falun Gong would be recognized as a religious organization if it applied and what the conditions for such recognition would be.

46. Commenting on the delegation's surprise at question 16 on the list of issues, he pointed out that in 2003, a Committee of Experts of the International Labour Organization (ILO) had noted that trade unions in Hong Kong SAR were becoming anxious about curbs placed on their freedom to organize and about widespread anti-union discrimination.

47. **Ms. Wedgwood** noted that, in a variety of contexts, the delegation had said that the authorities were trying to achieve certain goals, but that due to the requirement of a two-thirds majority vote in the Legislative Council, action had been delayed. There was a very deep structural connection between the degree of participatory democracy in a society and the ability to achieve reform.

48. That was the case with the interception of communications, mentioned in question 8 on the list of issues. In 1997, a statute on the matter had been proposed, but the chief executive had apparently refused to sign it. Now, nine years later, there was no change, as there was no two-thirds majority support for the statute. In regard to the new executive order which the Committee had heard about, she wondered whether the order made any distinction as to the types of crime where electronic surveillance was permitted. Many criminologists believed that surveillance should be reserved for the most serious crimes. She also wondered what provisions had been made for ignoring or not recording exchanges which were not relevant to the offence under investigation, particularly when those exchanges had to do with the private life of the suspect. In addition, she wondered whether there were criminal penalties or an exclusionary rule regarding information that had been collected unlawfully.

49. The delegation had said that the press was free and published much criticism of the Hong Kong SAR authorities. However, it was likely that a large part of the self-censorship had to do with matters relating to the central Government, i.e., that of mainland China, and issues such as the Falun Gong, Taiwan, dissident activity and Beijing politics. It would be interesting to know whether the Hong Kong authorities had taken action to address the issue with China, to point out that even informal expressions of displeasure could have an impact on freedom of expression. For example, it had been alleged that pro-democracy newspapers had been boycotted by major real estate developers, thereby depriving the newspapers of significant advertising

revenue. That necessarily had an effect on freedom of expression.

50. Regarding earlier references to scholars from Hong Kong who had been arrested in mainland China, allegedly for merely engaging in acts of academic enquiry, she said that a country or region had an obligation to take positive steps to protect its nationals when they were mistreated by another Government. It was not enough simply to say that one must abide by the law of the host country. It was surprising that the Hong Kong SAR authorities did not seem to feel it was their duty to intercede to protect their citizens.

51. In its responses, the delegation had stated that collective bargaining was confrontational and would have a negative impact on labour markets. However, collective bargaining provided a model of democracy at the grass-roots level. Perhaps the hesitation on the part of the Hong Kong SAR regarding collective bargaining was due to the fact that it could serve as a model for other types of negotiation.

52. **Mr. Amor** stated that he had difficulty reconciling the statements in paragraphs 103 and 73 of the report, regarding the obligations of the States Parties and wondered to what degree the delegation believed the Committee's decisions, statements and observations were obligatory.

53. He wished further clarification as to whether the fees charged at border crossings were for the use of airport facilities, tunnels, roads, or whether they were, rather, taxes having to do with the State's sovereignty and ability to grant permission to cross its borders.

54. He would like to know the numbers of Falun Gong adherents, and whether the delegation considered the Falun Gong to be a religious community or a community of conviction. It would be interesting to know how the authorities defined a religion and whether the Falun Gong were able to move freely between mainland China and the Region.

55. **Sir Nigel Rodley**, referring to questions 1 and 2, requested clarification as to how the Standing Committee of the National People's Congress had reached its interpretation in April 2004, and, more particularly, how the latter had been initiated. He wished to know whether it had been initiated by the Government of the Hong Kong SAR, and if not, would appreciate more information as to when and where it had been initiated. Further details as to what might have led the Government to initiate it, if indeed it had, without consultation with civil society, the Legislative Council and other institutions, would be welcome.

56. The move to expand suffrage, in particular in the matter of electing members to the Legislative Council and expanding the Committee which elected the head of State, had been blocked by the Legislative Council because, although a majority had been reached, it had not been a two-thirds majority. It would be valuable to know what proportion of the popularly elected members of the Legislative Council had not backed that Government initiative. Given that the Hong Kong SAR had a sophisticated, educated population, and a stable, well-governed society, it was difficult to understand why the State Party believed that the people should not be entrusted with universal suffrage.

57. Finally, he said that it was disappointing that the Hong Kong SAR had as yet demonstrated no interest in the Committee's recommendation regarding the establishment of a police complaints machinery; in many countries, such a mechanism was deemed a necessary part of a system of checks and balances over those who had a monopoly on the maintenance of public order. It would be interesting to know how much consideration that recommendation had received in 1999 and what the response would be, should the Committee reiterate that recommendation.

The meeting rose at 5.55 p.m.

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Eighty-sixth session

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Chairperson: Ms. Chanet

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06-27781 (E)

The meeting was called to order at 10.05 a.m.

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Second periodic report of the Hong Kong Special Administrative Region of the People's Republic of China (continued) (CCPR/C/HKG/2005/2)

1. *At the invitation of the Chairperson, the delegation of the Hong Kong Special Administrative Region of the People's Republic of China took places at the Committee table.*

2. **The Chairperson** invited the delegation of the Hong Kong Special Administrative Region to respond to the questions posed at the previous meeting by members of the Committee.

3. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region) said that her delegation appreciated the frank and constructive spirit with which dialogue with the Committee had been proceeding. With regard to Mr. O'Flaherty's question on the procedures for consultation and dissemination of the report and related documents, she said that the practice was for the Home Affairs Bureau, which was charged with drafting reports to treaty bodies, to hold consultations with the Legislative Council, relevant non-governmental organizations and the general public regarding drafts of reports to treaty bodies. All relevant documents were posted on the Bureau's website and printed versions of the texts were widely disseminated to libraries and other public outlets. Responding to Mr. Amor's question about an apparent inconsistency between paragraphs 73 and 103 of the report with regard to the Region's implementation of its obligations under international treaties, she pointed out that paragraph 103 dealt with the treaty obligations themselves, which were binding and had for the most part been incorporated directly into legislation, whereas paragraph 73 dealt with implementation of observations by treaty bodies, which were not binding and were implemented to the extent that it was feasible, affordable and necessary to do so in order to achieve the objectives concerned. A good example of how the Hong Kong government had taken steps to follow the advice and observations of treaty bodies in the past could be seen in its approach to specific legislation against racial discrimination, the closing of refugee detention camps, measures to integrate refugees and raising the age of criminal responsibility.

4. **Mr. Lai** Yee Tak (Hong Kong Special Administrative Region), responding to questions raised by Mr. O'Flaherty about the interpretation of the Basic Law by the Standing Committee of the National People's Congress, said that interpretation of the Basic Law by the Standing Committee was provided for in the Constitution of the People's Republic of China and in the Basic Law, when fundamental legal and constitutional issues were involved. There had been three such interpretations so far and the procedure in no way affected the autonomy of the Region, its rule of law or the independence of its judiciary. The courts in the Region had also been called upon to deal with a number of less fundamental cases involving the Basic Law. Under article 17 of the Basic Law the Standing Committee was required to consult with the Committee for the Basic Law, which was a joint body with equal numbers of members from the Region and the mainland, before giving its interpretations. Written submissions from the public, political parties and civil society relating to the matters concerned were also made public and taken into consideration.

5. Responding to Sir Nigel Rodley's question as to who had initiated the interpretation of April 2004, he said that the Standing Committee itself had taken the initiative on that occasion, as the issues in question had implications for the future development of the Region, the full implementation of the "one country, two systems" principle and the Basic Law, the relationship between the central Government and the Region and the long-term prosperity and stability of the Region.

6. Sir Nigel Rodley had also wished to know the basis for the Standing Committee's interpretation of April 2004, which had held that there should not be universal suffrage in the 2007 elections to elect the Chief Executive and the 2008 elections to elect the Legislative Council. Summarizing the Standing Committee's considerations in that interpretation, which had been publicly disseminated, he said that the proportion of geographic as opposed to functional constituencies was steadily increasing, showing a trend towards universal suffrage and greater democracy, which reflected the long-term goal of the government. Views in the Region as to the timing for introducing exclusively universal suffrage differed greatly, and the Standing Committee had received input from various sources.

7. Responding to further questions posed by Mr. O'Flaherty with regard to effect of the Standing Committee's April 2004 interpretation concerning the source of initiatives to amend the election process for electing the Chief Executive and the Legislative Council, a matter not clearly spelled out in the Basic Law, he said that the Standing Committee's decision that such initiatives should come from the Chief Executive was consistent with the executive-led system of government in the Region. In response to Mr. O'Flaherty's question as to whether the electoral system was moving forward or backward, he said that constitutional development in the Region had been moving steadily towards universal suffrage in accordance with the Basic Law. That could be seen in the increase in the number of Legislative Council members returned by universal suffrage.

8. The government's package of proposals for the 2007 and 2008 elections had sought to move in the same direction, although it had been rejected in December 2005 by the Legislative Council. Under the proposals 25 per cent of the Election Committee to elect the Chief Executive would have been elected by universal suffrage, as would have been 60 per cent of the seats on the Legislative Council. Although some claimed the government package had not gone far enough, he felt it was the best that could have been achieved within the Basic Law and would certainly not have been a step backwards.

9. Sir Nigel Rodley had also asked about the proportion of members of the Legislative Council elected by universal suffrage who had not supported the government's package. Generally speaking, surveys had shown broad public support for universal suffrage and for the government's package and against the Legislative Council's rejection of the package on the grounds that it lacked a timetable for introducing universal suffrage. Speaking specifically about the Legislative Council decision in December 2005 to reject the government's package, he said that 70 per cent of the members opposed to the package had been elected by universal suffrage, as contrasted with 33 per cent of those in favour.

10. Responding to a question by Mr. O'Flaherty on the functional constituencies, he said that the ultimate aim, enshrined in the Basic Law, was to reach an election system based exclusively on universal suffrage. The functional constituencies, representing various economic, professional and social sectors, were a transitional arrangement. The government package had sought, inter alia, to achieve some progress towards that ultimate aim. The Commission on Strategic Development, chaired by the Chief Executive, was studying the matter of constitutional development and preparing proposals for a universal suffrage system.

11. Responding to a point made by Ms. Wedgwood about the link between personal freedoms and democracy, he pointed out that democracy in the Region was still developing but that all of the freedoms found in more mature democracies were already being enjoyed by the people.

12. **Mr. Allcock** (Hong Kong Special Administrative Region) said that Mr. O'Flaherty had posed a number of questions concerning the Standing Committee's interpretations of the Basic Law. In that connection, he wished to remind the Committee that none of the interpretations had dealt with or affected the protection of rights guaranteed under the Covenant. There were channels and procedures, which had been extensively used in the interpretations so far, for informing the Standing Committee of any relevant matters, including, if need be, issues relating to Covenant rights, and the Standing Committee was also required, under the Basic Law, to consult with the Committee for the Basic Law before issuing an interpretation. As for potential damage to those rights by a future Standing Committee decision, he pointed out that the Government of the People's Republic of China had accepted the international obligations under the Covenant as applied to the Region, which was clearly stated in article 39 of the Basic Law.

13. In response to Mr. O'Flaherty's question regarding protections against the Standing Committee's acting ultra vires in interpreting the Basic Law, he pointed out that the Standing Committee was a permanent body of the National People's Congress, which was the supreme State organ of the People's Republic of China, and its power to interpret laws was enshrined in article 67 of the Chinese Constitution. That power had been reaffirmed in article 158 of the Basic Law of the Region and in a 1999 case before the Hong Kong Court of Appeals, which had found that the Standing Committee's power of interpretation was defined in general and unqualified terms. There seemed, therefore, to be no grounds for speculating whether the Standing Committee might act ultra vires in such matters.

14. With regard to Mr. O'Flaherty's question on the Region's reservation with regard to article 25 (b) of the Covenant, he noted that Mr. O'Flaherty had quoted a statement from a 1995 Hong Kong appeals court case that appeared to support the Committee's view that the reservation should be lifted. The statement in question was not, however, part of the appeals court's decision. The case, which preceded the Region's change of status in 1997, had involved an appeal against an earlier court decision that had found that the functional constituencies were constitutional, and the appeals court had rejected the appeal, finding that the existence of the functional constituencies was constitutional and fully compatible with the Covenant as applied to what was then the dependent territory of Hong Kong.

15. The government of the Region considered that the reservation to article 25 (b) of the Covenant continued to be in force for a number of reasons. First, the reservation should be given its natural meaning, which was that the Hong Kong government, like the Government of the United Kingdom that had entered the reservation originally, reserved the right not to apply article 25 (b) of the Covenant to the extent that it required that the election of a legislative body be by universal and equal suffrage. Secondly, looking at the purpose of the reservation, he said that the Hong Kong government, like the United Kingdom Government before it, wished to be free to introduce changes in the electoral system in a gradual and orderly manner. Thirdly, the reservation avoided the possibility of an absurdity that would frustrate both the purposes of the Covenant and the Region's long-term goals, namely, that a narrow, technical interpretation of the paragraph might allow a government to keep its legislative body partially appointed, i.e. not fully elected, which would circumvent the purpose of universal and equal suffrage without technically violating article 25 (b). Fourthly, the United Kingdom Government, a State party to the Covenant, was on record as stating that it considered the reservation as continuing, even if the Legislative Council were fully elected. Finally, the Government of the People's Republic of China had assumed responsibility for the Covenant as it applied to the Hong Kong Special Administrative Region, but its responsibility could not be greater than that of the previous government, namely, the Government of the United Kingdom.

16. Responding to questions posed by Mr. O'Flaherty with regard to national security legislation and article 23 of the Basic Law, he said that the Hong Kong government had neither a timetable nor any definite plans for reviving consideration of such legislation and that the government had pledged to consult with the public, as it did in all matters, before any legislative proposals would be considered. In that connection, he referred members of the Committee to paragraphs 395 and 396 of the report.

17. In reply to the question regarding the bill on article 23, he said that the current official secrets legislation covered four areas; it remained to be seen for a future bill whether more or fewer areas should be provided for. In the original bill, which had not been enacted, the government had intended to delete the provision on the exercise of powers of search without a court warrant in emergency situations, as well as the provision to the effect that an organization was to be proscribed in the Region if it was a subordinate body of an organization banned on the mainland; that provision had indeed already been subject to certain conditions. In any case, any legislative bill must comply with the Covenant, as stipulated in article 39 of the Basic Law, which also therefore served to ensure all the Covenant rights, including protection of freedom of expression.

18. He agreed with Ms. Wedgwood that common law was not always a good guide to human rights practice and that the current law on treason and sedition was too broad. The government had indeed intended to narrow down such offences in the bill that had not been passed. Nevertheless, such offences were interpreted in the light of the Covenant. In response to Mr. Wieruszewski's concern that the Societies Ordinance and the Public Order Ordinance should be reviewed to ensure compliance with the Covenant, he said that such review was not necessary. They were applied liberally in practice and the restrictions that they allowed for merely replicated those appearing in Covenant articles 19 and 22; in cases brought before the courts, they had been found acceptable. Contrary to what had been suggested in the Committee's 1999 concluding observations, they could not be used unduly to restrict enjoyment of rights under article 21 of the Covenant, since that would run counter to the Covenant and would thus be in breach of article 39 of the Basic Law.

19. On the question of intereceptions of communications, the Chief Executive had refused to sign the 1997 Ordinance on the subject, which had in

any case not been enacted through legislative process. The government had identified many defects in it and wished to review it before deciding whether to bring it into force. The Court of Final Appeal had found that the Chief Executive had acted lawfully in not bringing the Ordinance into effect.

20. He pointed out to Ms. Wedgwood that two thirds support was not usually required for a bill; for most domestic legislation, a simple majority was sufficient. Nor was it true that the current composition of the Legislative Council did not favour liberal reform.

21. The executive order signed the previous year by the Chief Executive was an interim measure on covert surveillance and did not deal with the interception of telecommunications, which was covered by a more wide-ranging bill currently before the Legislative Council. The executive order had been designed solely in the interests of crime prevention and was subject to a proportionality test in that the need for information had to be weighed against the intrusiveness of surveillance. As for the bill, it made a distinction between serious and less serious crimes: a warrant for the interception of communications could only be issued for an offence carrying a maximum penalty of not less than seven years' imprisonment; for covert surveillance, the offence had to carry a maximum penalty of not less than three years' imprisonment. The bill contained provisions on the handling and destruction of materials as well as on safeguarding and access; it provided for arrangements to ensure the destruction of the products of interception and surveillance, which were to be monitored by an independent commission; and it called for the establishment of codes of practice. Disciplinary measures could be taken against any breach of those rules on the part of government officials. The bill expressly said that any products of intercepts were not admissible as evidence in a court but were intended only to serve the purpose of intelligence gathering. It was for the courts to decide, in accordance with common law, whether unlawfully obtained evidence could be used; the main consideration was that it should not affect the fairness of the trial nor entail an abuse of process.

22. It was rare for journalistic materials to be seized; the measure taken to that effect the previous year had been ordered by a judge of the court of first instance on the basis of public interest. The question of proportionality did not arise directly in the application of the relevant statutory provision. A balance had to be found, in the light of case law, between the two aspects of public interest, namely, protection against crime and the protection of the rights of citizens.

23. **Ms. So** Ka Pik (Hong Kong Special Administrative Region) agreed with Ms. Wedgwood that the authorities had a duty to protect Hong Kong citizens outside the Region, without however interfering with judicial process. Where cases arose in mainland China, concerns would be conveyed directly to the mainland authorities; in other countries, they would be relayed through diplomatic channels.

24. In reply to Mr. Solari Yrigoyen's question about human trafficking, she said that the Region was neither a place of origin for such trafficking nor a place of destination for illegal immigrants. Because of its geographical situation and its liberal regime, it did, however, attract immigrants; the authorities were for that reason extremely vigilant and, when necessary, initiated prosecutions. As to whether legal aid and general assistance were extended to the victims of human trafficking, no one could be prevented by lack of means from being duly represented in a court in the Region. If medical care was required and such persons could not pay fees, the authorities could decide to waive them. She acknowledged that the Region did import domestic helpers, mostly from South-East Asia, but through legal channels. They were given two-year contracts, set by the government, and benefited from a minimum wage. They enjoyed the same protection as local workers; if they were required to act illegally or were underpaid, they were encouraged to have recourse to the authorities. Employers were expected to provide them with board and lodging, so that there was no need for them to resort to social security.

25. On the question of whether Falun Gong was registered as a religion, she said that there was no requirement regarding the registration of religious bodies in the Region. The government had no information on the number of practitioners, whether or not belonging to the Falun Gong association. No one was barred from entering the Region on the grounds of their religion. The immigration department, when deciding whether to admit aliens, gave due consideration to all relevant factors, as did immigration authorities elsewhere.

26. **Mr. Wong** Sze Ping (Hong Kong Special Administrative Region), referring to the Region's

police complaint system, said that it was robust and efficient and on a par with anything that existed elsewhere. Complaints were carefully prepared by the Complaints Against Police Office (CAPO), then submitted to an Independent Police Complaints Council (IPCC); they were also brought to the attention of the Chief Executive. In addition, members of IPCC were able to monitor police investigations and could themselves address any concerns to CAPO. Steps were being taken to make IPCC a statutory body; consultations were under way on the subject.

27. In reply to the question about child pornography legislation, he said that the Ordinance thereon was in line with the Optional Protocol to the Convention on the Rights of the Child and also with International Labour Convention No. 182 on the Elimination of the Worst Forms of Child Labour. Under the Ordinance, a number of arrests had been made and sentences handed down.

28. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region), referring to the question put by Mr. O'Flaherty regarding the possibility of a dedicated human rights commission, said that the government considered that, while it was not in principle averse to the establishment of such a body, sufficient safeguards already existed for human rights protection, in particular the Bill of Rights Ordinance, the Ombudsman, the Equal Opportunities Commission (EOC) and other machinery. It would however keep the matter under review. The Commission would indeed be mandated to deal with questions of racial discrimination, once the legislative process was complete; its budget was adequate and compared favourably with similar bodies elsewhere; it did have enforcement powers and could both initiate and conduct investigations. On the basis of various internal reviews undertaken over the years, the view had been reached that it did not need to be replaced but simply strengthened. She disagreed that the Independent Panel of Inquiry on the Commission had not in fact been sufficiently independent; in any case there was no point in re-opening an issue that the government had put behind it.

29. A comprehensive legal framework of family and child protection provisions was in place that covered domestic violence as well. The Hong Kong government was gradually reviewing the Domestic Violence Ordinance, under which restraining orders could currently be issued against spouses, in order to broaden its scope to include court-ordered counselling as a sentencing option, a definition of domestic violence, and the like. The police force took a very serious view of domestic violence. Recently, a system operating through 14 district liaison groups had been put in place to improve communication on case referrals between the Social Welfare Department, the police and non-governmental organizations working in the field. Police training on domestic violence had been enhanced in 2004, and topics such as sensitivity to complaints, victim psychology and conflict management were routinely discussed. Since 2005, a database of previous offenders was available and would help determine appropriate action.

30. The system of voluntary collective bargaining in the workplace encouraged by the government of the Region, underpinned by Labour Department consultancy services, had been working well. The government was aware that its promotion of workers' rights and benefits had to keep pace with the development of its competitive, externally based economy, which would in turn contribute to the advancement of workers.

31. The best safeguard against possible self-censorship by the press in a free and open society like the Special Administrative Region was for its government to create an environment conducive to a free press. It was then up to the media professionals themselves to preserve freedom of information, opinion and advertising.

32. The government had dropped the idea of charging a modest boundary facilities improvement tax, although it did not believe it would have hampered freedom of movement.

33. **Mr. O'Flaherty** asked the delegation to comment on reports that the general public had actually not been involved in the consultative process surrounding the 2004 interpretation of the Basic Law by the Standing Committee of the National People's Congress. Furthermore, he was surprised that the Committee for the Basic Law established under the Standing Committee, a body of such fundamental importance for the Region, had only 50 per cent Hong Kong membership and that it was composed only of lawyers. On the issue of ultra vires actions by the Standing Committee, the delegation had painted a disturbing picture in which absolute power was wielded by a body not elected by universal suffrage. His concern was that

its exercise could raise issues under article 2 of the Covenant and restrict the enjoyment of civil and political rights.

34. Regarding the reservation to article 25 (b) of the Covenant, he referred the government to the Committee's general comment 24 and especially paragraph 19 on the interpretation of reservations, the criteria for which were provided by international law as derived from the Vienna Convention and customary law.

35. He had been pleased to hear that the Equal Opportunities Commission had been given a mandate to deal with race issues but had been disappointed by the other responses concerning the Commission.

36. **Mr. Ando** explained that the Committee was anxious to learn about the observance of human rights in the Hong Kong Special Administrative Region because the Chinese represented one fifth of the world's population and the situation in the Region was a mirror of the future global human rights situation.

37. Even though the Region was not a destination or place of origin for human trafficking, organized syndicates were behind it; and he would like to know if there had been any prosecutions for human trafficking.

38. **Ms. Wedgwood** said that in her earlier questions her concerns had been that the charge of sedition as a bar to immigration into the Region could be used to exclude Falun Gong members, and that the self-censorship by the media had perhaps been induced by signals clearly sent by the mainland authorities that certain information should be suppressed.

39. While the Standing Committee of the National People's Congress did not review particular cases, it nevertheless was the foremost and binding constitutional tribunal. However, it did not look or act like a tribunal: the modern model of a constitutional court was an independent court. Thus, over time, the role of the Standing Committee — its mandate having perhaps been the political price of Hong Kong autonomy — was very troublesome for the principle of "one country, two systems". At most, the Standing Committee should intervene only occasionally and deferentially, so as not to impugn the independence of the Region's legal system.

40. **Ms. So** Ka Pik (Hong Kong Special Administrative Region) said that the only human trafficking case that had been prosecuted in 2004 had been a smuggling case unrelated to prostitution.

41. **Mr. Lai** Yee Tak (Hong Kong Special Administrative Region) observed that the Basic Law was a national law, binding on the whole of China as well as on the Hong Kong Special Administrative Region, and the membership of the Committee for the Basic Law simply reflected that reality. The 1990 decision establishing the Committee had stipulated that its 12 members should include persons from the legal profession and thus the membership of lawyers was a requirement.

42. The issues surrounding the 2004 interpretation had been much discussed in the Region at the time and the public debate had gone on for some time. There had been extensive consultations, and all views received from whatever source had been transmitted to the Standing Committee.

43. **Mr. Allcock** (Hong Kong Special Administrative Region) said that the government of the Region was familiar with the Committee's general comment 24 and all the others; in fact, two of the general comments had been cited directly in two separate court cases. It was also familiar with article 19 onwards of the Vienna Convention, on the formulation and acceptance of reservations. The principles he himself had referred to, concerning reservations to articles of the Covenant, were not limited to statutory interpretation; they were almost universally applied principles — that the words should be given their natural meaning, and that the purpose of the reservation should be considered — and could therefore be fittingly invoked.

44. **The Chairperson** invited the delegation to reply to the remaining questions on the list of issues.

Expulsion of aliens; right to enter one's own country; protection of the family and children (articles 12, 13, 23 and 24 of the Covenant)

45. **Ms. So** Ka Pik (Hong Kong Special Administrative Region), referring to question 17, said that undesirable immigrants subject to removal orders under the Immigration Ordinance were non-permanent residents of the Region whose presence was prejudicial to its interests or general well-being or posed a threat to law and order. To date, the power had not been exercised. It would be difficult to give express criteria for determining that the deportation of an immigrant was conducive to the public good. That power — which had also not yet been exercised — could be used only when the public interest was seriously at stake.

46. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region), apprising the Committee of the latest developments relating to refugees and asylum-seekers (question 18 of the list), said that she had been informed that the Office of the United Nations High Commissioner for Human Rights (UNHCR) had just decided to discontinue financial assistance to 80 vulnerable asylum-seekers in the Region. Though the 1951 Convention Relating to the Status of Refugees was not applicable in the Region, its government would, on humanitarian grounds, continue its existing policy of rendering support to those refugees, in the hope that the United Nations would give UNHCR the funds it needed to discharge its obligations in all parts of the world.

47. **Ms. So** Ka Pik (Hong Kong Special Administrative Region), referring to question 18, said that the Hong Kong government had a firm policy of not granting asylum, given its dense population and the fact that its relative economic prosperity made it a magnet for refugees from the entire Asian region. Claims for refugee status were handled by UNHCR: persons officially recognized as refugees were normally permitted to enter into recognizance pending their overseas resettlement by UNHCR, and persons awaiting UNHCR assessment could also be allowed to enter into recognizance in lieu of detention on a case-by-case basis. That did not, however, constitute permission to remain or to take up employment. Any such persons who were unable to meet their basic needs received welfare in kind from the government. School attendance by children of recognized refugees could be allowed on exceptional humanitarian grounds; there were currently 23 such children in Hong Kong schools. Following the Court of Final Appeal's judgement in the Prabakar v. Secretary for Security case, the government had put in place administrative procedures for assessing claims made under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which it believed met the highest standards prescribed by the Court.

48. Turning to question 19, she said that the criteria for eligibility for the right of abode in the Special Administrative Region were set out in article 24 of the Basic Law, which, together with other laws, policies and administrative arrangements on the right of abode, was consistent with the relevant human rights treaties. In January 2002, the Court of Final Appeal had set down key principles for dealing with the outstanding right-of-abode cases before it. By the end of 2005, the Court had disposed of almost all of them: of some 5,000 cases, 4,340 had been dismissed, 238 had been allowed and 420 had been withdrawn. Mainland residents who had no legal right to stay in the Region must return to the mainland unless they were eligible to apply for a one-way permit for settlement. The one-way permit scheme operated on a transparent point system under which priority was given to spouses and dependent children. Since the handover of sovereignty, over 446,000 mainland residents had settled under the scheme, which the government considered a fair and orderly programme to facilitate family reunion.

Right to take part in the conduct of public affairs, right to vote (article 25 of the Covenant)

49. **Mr. Wong** Sze Ping (Hong Kong Special Administrative Region), referring to question 20, said that the city of Hong Kong was one of the safest and most peaceful in the world, with an extremely low crime rate. Its government protected every member of the community and did not tolerate acts of violence, property damage or criminal intimidation. The police investigated any such allegations and took swift action to uphold the law and protect rights and freedoms. At the same time, any judicial proceedings had to be based on sufficient and concrete evidence.

Prohibition of discrimination and rights of persons belonging to minorities (articles 26 and 27 of the Covenant)

50. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region), referring to the rights and benefits under the various labour laws, said that foreign domestic workers (question 21 of the list of issues) were treated no differently from other workers under those laws and were also protected under the various anti-discrimination ordinances. A further protection was the standard employment contract, which required employers to pay foreign domestic workers at least the government-prescribed minimum wage and provide free accommodation, food, medical treatment and return passage. In cases of abuse, free legal aid was available to any foreign worker who met the means and merit test, and the Labour Department worked with non-governmental organizations to provide needed support services. Foreign domestic workers were also covered by the same welfare safety net available to other persons.

51. **Mr. Shearer** said that the Hong Kong Special Administrative Region was unique in that the State party in question — the People's Republic of China — had not acceded to the Covenant but was nonetheless ultimately responsible for its implementation in the Region. In the 10 years since the reintegration of the Region into the People's Republic, the situation had remained largely as envisaged by the historic terms of the British withdrawal. There had been some problems, but by and large the people enjoyed a high level of protection of their human rights; for that, both the Central Government and the government of the Region were to be congratulated.

52. He had several serious concerns, however. He wondered if the Chief Executive's power to order deportation of undesirable immigrants, which remained untested, could in future be used as a means of de facto extradition of mainland Chinese accused of offences on the mainland. No formal extradition arrangements were in place between the Region and the People's Republic. Yet mainland law apparently had extraterritorial effects, allowing the People's Republic to prosecute Hong Kong residents for crimes committed in the Region under mainland criminal law. Should not such cases of concurrent jurisdiction be dealt with under formal arrangements and clear procedures? He also would like to know the justification for maintaining a reservation to article 13 that had been made by the former British authorities, regarding the right of judicial review of deportation orders of lawful residents.

53. With regard to asylum, he was pleased to hear that, following the decision in the Prabakar v. Secretary for Security case, procedures had been put in place for assessing applications for asylum on the grounds that the applicant faced torture if returned to the country of origin. However, the implications of the decision might go even further to the question of refoulement generally in cases where the asylum-seeker, if returned, might be subject to persecution on the grounds of race, religion, nationality or political opinion. Although the Hong Kong Special Administrative Region was not a party to the 1951 Geneva Convention relating to the Status of Refugees, the non-refoulement obligation set forth in article 33 of the Convention had come to be regarded as part of customary international law and thus no longer depended on adherence to the Convention. Many observers had noted that the lack of a formal assessment procedure for asylum-seekers had led to much hardship, including the lack of basic support and medical assistance pending resolution of their claims. On the other hand, the Committee was pleased to learn that when the Office of the United Nations High Commissioner for Refugees (UNHCR) was obliged to end the limited support it had provided to asylum-seekers in the Region, the Hong Kong regional government was willing to fill the gap.

54. With regard to right of abode, the Committee recognized that the Region did not have an unlimited capacity to absorb all who might wish to live there. However, the one-way permit scheme to enable eligible mainland residents to settle in the Region had been widely criticized as lacking uniform, transparent eligibility criteria, thus encouraging bribery and smuggling of persons. Since the eligibility of family members was considered separately, the result was often the splitting of families.

55. **Sir Nigel Rodley** said that he appreciated the frank and articulate responses of the delegation. It was interesting that in the voting on the proposed electoral package, the majority of the public, according to opinion polls, and the majority of the elected members of the Legislative Council were in favour, whereas the majority of non-elected members of the Council were opposed. Members of a legislature would not always vote in accordance with opinion polls, but he wondered if any thought had been given to introducing referendums on some issues. With regard to the purposive element in interpretation of a reservation, it seemed that the Hong Kong government was considering the purpose of the reservation, whereas, in accordance with the Vienna Convention on the Law of Treaties, it was the object and purpose of the Covenant that should be the yardstick for interpretation. Lastly, he wondered whether the Complaints Against Police Office or the Independent Police Complaints Council put out an annual report that could be made available to the Committee.

56. **Mr. Solari Yrigoyen** said that he appreciated the generally excellent responses of the delegation. In one instance, however, with regard to the allegations of inadequate police response to threats and vandalism against legislators of the Democratic Party, the reply had been vague, and he would appreciate further details.

57. With regard to the situation of foreign domestic workers, of which there were many in the Region, the

Committee had heard that the laws regarding minimum wage and other benefits were not always respected. There were many allegations of outright discrimination, particularly with regard to housing, and of indirect discrimination in the strict interpretation of laws to prevent access to public services. Whereas some foreign workers could apply for citizenship after a certain number of years, a foreign domestic worker might work in the Region for 20 years and still not be eligible. He wondered if foreign domestic workers had any opportunity to be enrolled in a pension plan, and he would appreciate an explanation of the two-week rule.

58. **The Chairperson** invited the delegation to respond to the additional questions posed by the Committee members.

59. **Mr. Lai** Yee Tak (Hong Kong Special Administrative Region) said that the Basic Law did not provide for the possibility of a referendum. He understood that it was not generally a requirement under the Covenant. The annexes to the Basic Law were clear on the subject of voting procedures and provided that if there was a need to amend the methods for selecting the Chief Executive or forming the Legislative Council such amendments would require the endorsement of a two-thirds majority of the Legislative Council, the consent of the Chief Executive and the approval of the Standing Committee of the National People's Congress. It was true that legislators sometimes took positions not in keeping with public opinion, and it was for them on such occasions to explain their reasons.

60. **Mr. Wong** Sze Ping (Hong Kong Special Administrative Region) said that the Independent Police Complaints Council did in fact produce a report, which would be made available to the Committee.

61. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region) said that the Hong Kong government would try to fill the gap for vulnerable refugees and asylum-seekers. It had a policy of helping on a case-by-case basis with housing and other assistance, but was reluctant to offer money for fear of creating an incentive for refugees to come to the Region.

62. **Ms. So** Ka Pik (Hong Kong Special Administrative Region) said that, despite the reservation to article 13 of the Covenant insofar as it conferred a right of review of a decision to deport an alien and a right to be represented for that purpose before the competent authority, the existing mechanism in the Region did in fact provide adequate safeguards for persons facing deportation, who had ample opportunities to make representations against their deportation. In determining whether a deportation order should be made, all relevant circumstances, including the person's connections with the Hong Kong Region and other countries, would be considered, and the most careful consideration would be given to claims that deportees might face the death penalty, torture or inhuman, cruel or degrading treatment as a consequence of their deportation. Any individual served with a deportation order could lodge an objection within 14 days, to be considered by the Chief Executive in Council. Although the individual would not be present at that stage, all written submissions would be considered. If the decision was unfavourable, the individual could apply to the Court for judicial review and was entitled to be present at those proceedings.

63. Concerning the right of abode and the one-way permit scheme, she said that, in accordance with the Basic Law, residents of mainland China wishing to settle in the Region must apply for exit approval under the one-way permit scheme. The system was implemented by the mainland authorities, but the Hong Kong government was in constant contact with them concerning the operation of the scheme, which had been improved over the years to take into account family concerns. The scheme involved a point system, widely publicized in the newspapers and the application offices, under which priority was given to spouses and children under 18 years of age of persons already resident in the Region. Moreover, the mainland authorities published the names of those receiving a one-way permit in the newspapers and had established complaint procedures and set up hotlines to address complaints of corruption or mishandling. Since 2003 new measures had been in place to facilitate family unity. For example, when both spouses had received permits, the application for children under 18 to join them was normally processed in less than one year.

64. **Mr. Allcock** (Hong Kong Special Administrative Region) said that, from a legal standpoint, deportation or removal orders could not be used for de facto extradition to the mainland. Under a deportation or removal order the person concerned was required to leave the Region but was not obliged to go to any particular jurisdiction. If an individual under a deportation or removal order were to be forcibly

removed to the mainland — something that had not happened to date — he or she could bring a habeas corpus appeal. It was theoretically possible for someone to be prosecuted on the mainland for offences committed in the Region, since the mainland courts had concurrent jurisdiction. To his knowledge, that had only happened in two highly publicized cases. The desirability of clear procedures for rendition to the mainland had been seriously debated in the Region and discussed with mainland authorities, but it would require legislation to be enacted.

65. The reservation to article 13 of the Covenant had actually been formulated by the United Kingdom with respect to Hong Kong; it would be reconsidered by the Chinese Government in the context of China's decision to accede to the Covenant. Lastly, with regard to the question about refoulement, individuals facing removal or deportation orders often appealed for judicial review on grounds other than the threat of torture, and the courts were developing jurisprudence.

66. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region) said that her delegation shared the Committee's view that the government of the Region should safeguard the rights and benefits of foreign domestic workers. Of over 2,000 labour complaints brought by domestic workers, only 10 per cent had related to underpayment. The penalty for not paying the minimum wage was severe, involving both a fine and one year's imprisonment, and it was about to be increased.

67. **Mr. Wong** Sze Ping (Hong Kong Special Administrative Region) said he could assure the Committee that the police were vigorously investigating the incidents of vandalism against legislators in the lead-up to the 2004 elections. Because the investigations were ongoing, he was not at liberty to divulge the details.

68. Under the two-week rule, foreign domestic workers must leave the Region within two weeks of the termination of their employment contracts, and the cost of the return flight must be borne by their employers. The rationale was that they had been admitted for that job only, not to perform other work. While working in the Region, foreign domestic workers enjoyed the same access as Hong Kong residents to the services of the Labour Department, including the investigation of complaints, conciliation and legal aid in bringing a claim before the Labour Tribunal.

69. **The Chairperson**, summing up the discussion, said that on the positive side the delegation's report and oral responses had been particularly thorough and thoughtful, and its efforts at dissemination were to be commended. The Committee appreciated the opportunity it had had over the years to have sustained contact with non-governmental organizations in the Region and was pleased at the importance they had assumed in civil society. Another positive aspect was the Region's judicial system. The Committee was particularly pleased that the Court of Final Appeal expressly applied and referred to the provisions of the Covenant in arriving at its decisions. It was also commendable that the Region intended to assist UNHCR.

70. The areas of concern, which the delegation would see reflected in the Committee's concluding observations, had to do with the fragility of democracy in the political structure of the Region. The Committee had not been satisfied with the answer to its questions on the intimidation of certain legislators. There appeared to be threats to the freedom of the press, as exemplified by the introduction of the National Security Bill, which happily had been withdrawn. The Committee also regretted that there was no independent human rights authority, which might, among other things, receive complaints against the police. In 1999 the Committee had been told that appeals to the Standing Committee of the National People's Congress for legal interpretation of the Basic Law were exceptional, but such interventions had occurred quite frequently since then. What concerned the Committee were the instances in which the Standing Committee intervened through its interpretation of the Basic Law in judicial decisions, as in the case of the Director of Immigration v. Chong Fung Yuen. It was difficult to reconcile such intervention by a political body in judicial decisions with article 14 of the Covenant. There was also the issue of the differing interpretations of the scope of the reservation to article 25 of the Covenant with regard to an elected legislature and other questions regarding collective bargaining, discrimination, one-way permits, telecommunication interceptions and expulsion of aliens.

71. **Mr. Allcock** (Hong Kong Special Administrative Region) pointed out that the Chong Fung Yuen case had been decided by the Hong Kong Court of Final Appeal; there had been no intervention by the Standing Committee.

72. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region), in closing, said that in her previous job as head of the Hong Kong Economic and Trade Office in London she had become keenly aware that the attraction of the Hong Kong Special Administrative Region to investors rested on the rule of law, an independent judiciary, freedom of speech and expression, an honest and efficient government and a level playing field. Those elements, consonant with the Covenant and guaranteed by the Basic Law, were the cornerstone of the Region's prosperity, and its government intended to do its utmost to strengthen Covenant rights for all its residents.

The meeting rose at 1.05 p.m.